

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

LAUSTEVEION JOHNSON,

Case No. 3:22-cv-00090-ART-CSD

Plaintiff,

ORDER

v.

LAURIE HOOVER, *et al.*,

Defendants.

*Pro se* Plaintiff Lausteveion Johnson filed an application to proceed in *forma pauperis* and submitted a civil-rights complaint under 42 U.S.C. § 1983. (ECF Nos. 1, 1-1). On July 7, 2022, the Court screened the complaint, permitting one claim to proceed and dismissing the remaining claim with leave to amend. (ECF No. 6 at 9-10). Plaintiff chose not to amend his complaint. The Court subsequently granted Plaintiff's application to proceed *in forma pauperis*, excluded the case from the Inmate Early Mediation Program, and indicated that this action would "proceed on the normal litigation track." (ECF Nos. 8, 9, 10). Following acceptance of service, the sole remaining defendant, Jennifer Nash, moved to dismiss the complaint on the grounds that it is "maliciously duplicative" of a complaint in a previously filed case. (ECF No. 14).

Instead of responding to the motion to dismiss, Plaintiff filed a notice of voluntary dismissal of this action. (ECF No. 16). Under Federal Rule of Civil Procedure 41(a)(1), a plaintiff may dismiss an action without a court order by filing "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i). "[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is required, the parties are left as though no action had been brought, the defendant can't complain, and the district court lacks jurisdiction to do anything about it." *Commercial Space*

1 *Mgmt. Co., Inc. v. Boeing Co., Inc.*, 193 F.3d 1074, 1078 (9th Cir. 1999). Moreover,  
2 “[e]ven if the defendant has filed a motion to dismiss, the plaintiff may terminate  
3 his action voluntarily by filing a notice of dismissal under Rule 41(a)(1).” *Concha*  
4 *v. London*, 62 F.3d 1493, 1506 (9th Cir. 1995); *see also Kun Yuan Asset Mgmt.*  
5 *Co. Ltd. v. Su*, No. 21-cv-06236-BLF, 2022 WL 206794, at \*1 (N.D. Cal. Jan. 24,  
6 2022) (“While Defendant has filed a motion to dismiss, this does not constitute  
7 an ‘answer or a motion for summary judgment’ under Rule 41(a)(1)(A)(i).”). Thus,  
8 because no answer or motion for summary judgment has been filed, the Court  
9 dismisses this action without prejudice.

10 It is therefore ordered that this action is dismissed in its entirety without  
11 prejudice.

12 It is further ordered that Defendant Jennifer Nash’s motion to dismiss (ECF  
13 No. 14) is denied as moot.

14 It is further ordered that the Clerk of the Court will close this case.

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16 DATED THIS 16<sup>th</sup> day of November 2022.

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21 ANNE R. TRAUM  
22 UNITED STATES DISTRICT JUDGE  
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